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MARIA BALMACEDA

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARIA BALMACEDA,

Plaintiff,

V.

GC SERVICES, LP,

Defendant.

Case No.: '11CV2780 H WMC

PLAINTIFF'S COMPLAINT

PLAINTIFF'S COMPLAINT

Plaintiff, MARIA BALMACEDA (Plaintiff), through her attorneys, KROHN & MOSS, LTD., alleges the following against Defendant, GC SERVICES, LP., (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788 et seq.* (RFDCPA).

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before “any appropriate United States district court

1 without regard to the amount in controversy,” and 28 *U.S.C. 1367* grants this court
2 supplemental jurisdiction over the state claims contained within.

3 4. Defendant conducts business in the state of California, and therefore, personal
4 jurisdiction is established.

5 5. Venue is proper pursuant to 28 *U.S.C. 1391(b)(2)*.

6 **PARTIES**

7 6. Plaintiff is a natural person residing in Chula Vista, San Diego County, California.

8 7. Plaintiff is a consumer as that term is defined by 15 *U.S.C. 1692a(3)*, and according to
9 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 *U.S.C. 1692a(5)*
10 and *Cal. Civ. Code § 1788.2(h)*.

11 8. Defendant is a debt collector as that term is defined by 15 *U.S.C. 1692a(6)* and *Cal. Civ.*
12 *Code §1788.2(c)*, and sought to collect a consumer debt from Plaintiff.

13 9. Defendant is a collection agency with a business office in Houston, Texas.

14 10. Defendant’s business includes, but is not limited to, collecting on unpaid, outstanding
15 account balances.

16 11. As part of its daily running of business, Defendant maintains detailed account listings
17 regarding the activity that takes place on each of the accounts that it is performing
18 collection services.

19 12. Defendant’s activities such as telephone calls, telephone conversations and written
20 correspondence regarding an account are recorded in detail in the account listing.

21 13. Defendant’s detailed account listings are created and maintained in the regular course of
22 business.

23 14. The entries into the detailed account listings are made contemporaneously with the
24 events they memorialize.

25 15. When an unpaid, outstanding account is placed with Defendant it is assigned a file
number.

1 16. Defendant acted through its agents, employees, officers, members, directors, heirs,
2 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
3 insurers.

4 17. Defendant's employee, Anthony, communicated with Plaintiff in an attempt to collect a
5 debt.

6 18. Defendant's employee, Lee, communicated with Plaintiff in an attempt to collect a debt.

7 19. Defendant's employee, Anthony, was working within the scope of his employment
8 when he communicated with Plaintiff in an attempt to collect a debt.

9 20. Defendant's employee, Lee, was working within the scope of his employment when he
10 communicated with Plaintiff in an attempt to collect a debt.

11 **FACTUAL ALLEGATIONS**

12 21. Defendant is attempting to collect a debt from Plaintiff on behalf of the original creditor,
13 American Express, with an account number ending in 1008, Defendant's file number
14 1581952.

15 22. Plaintiff's alleged debt owed to American Express arises from transactions for personal,
16 family, and household purposes.

17 23. In approximately July or August of 2011, American Express placed an unpaid,
18 outstanding account balance with Defendant for collection purposes.

19 24. At the time of placement, the approximate account balance was \$7645.94.

20 25. Starting in approximately July or August of 2011, Defendant began placing collection
21 calls to Plaintiff in an attempt to collect a debt owed to American Express.

22 26. Defendant's employee, Anthony, left voicemail messages for Plaintiff, in an attempt to
23 collect a debt, that failed to meaningfully disclosure the caller's identity. *See*
24 Defendant's transcribed voicemail messages attached as Exhibit A.

25 27. Defendant's employee, Anthony, left voicemail messages for Plaintiff, in an attempt to
collect a debt, that failed to state the communication was from a debt collector. *See*

1 Exhibit A.

2 28. Defendant's employee, Lee, left voicemail messages for Plaintiff, in an attempt to collect
3 a debt, that failed to meaningfully disclosure the caller's identity. *See* Defendant's
4 transcribed voicemail messages attached as Exhibit A.

5 29. Defendant's employee, Lee, left voicemail messages for Plaintiff, in an attempt to collect
6 a debt, that failed to state the communication was from a debt collector. *See* Exhibit A.

7 30. Defendant's messages for Plaintiff request a return call to 800-846-6406, a telephone
8 number belonging to Defendant.

9 **COUNT I**
10 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

11 31. Defendant violated the FDCPA based on the following:

12 a. Defendant violated §1692d of the FDCPA by engaging in conduct that the
13 natural consequences of which was to harass, oppress, and abuse Plaintiff in
14 connection with the collection of an alleged debt.

15 b. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without
16 meaningful disclosure of the caller's identity.

17 c. Defendant violated §1692e of the FDCPA by using false, deceptive, and
18 misleading representations in connection with the collection of any debt.

19 d. Defendant violated §1692e(10) of the FDCPA by using deceptive means in an
20 attempt to collect a debt.

21 e. Defendant violated §1692e(11) of the FDCPA by failing to disclose in
22 subsequent communications that the communication was from a debt collector.

23 WHEREFORE, Plaintiff, MARIA BALMACEDA, respectfully requests judgment be
24 entered against Defendant, GC SERVICES, LP., for the following:

25 32. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, 15
U.S.C. 1692k,

33. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
15 U.S.C. 1692k.

34. Any other relief that this Honorable Court deems appropriate.

COUNT II
DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT

35. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as
the allegations in Count II of Plaintiff's Complaint.

36. Defendant violated the RFDCPA based on the following:

a. Defendant violated *§1788.11(b)* of the RFDCPA by placing telephone calls
without disclosure of the caller's identity.

b. Defendant violated the *§1788.17* of the RFDCPA by continuously failing to
comply with the statutory regulations contained within the FDCPA, *15 U.S.C. §*
1692 et seq.

WHEREFORE, Plaintiff, MARIA BALMACEDA, respectfully requests judgment be
entered against Defendant, GC SERVICES, LP., for the following:

37. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices
Act, *Cal. Civ. Code §1788.30(b)*,

38. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection
Practices Act, *Cal. Civ Code § 1788.30(c)*, and

39. Any other relief that this Honorable Court deems appropriate.

Respectfully Submitted,

KROHN & MOSS, LTD.

By: /s/ Michael S. Agruss
Michael S. Agruss
Attorney for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MARIA BALMACEDA,

(b) County of Residence of First Listed Plaintiff San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Krohn & Moss, Ltd. Michael S. Agruss (323) 988-2400
10 N. Dearborn Street, 3rd Floor, Chicago, IL 60602

DEFENDANTS

GC SERVICES, LP,

County of Residence of First Listed Defendant Houston (TX)
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'11CV2780 H WMC**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692 et seq.

Brief description of cause:
Unlawful and abusive debt collection practices

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/29/2011

/s/ Michael S. Agruss

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.